

Editor's note: Reconsideration denied by order dated Sept. 27, 1977

LEONARD R. McSWEYN
DAVID A. PROVINSE

IBLA 76-647

Decided September 9, 1976

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 33998.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to

The Secretary has discretionary authority to reject an oil and gas lease offer where federal title to the oil and gas deposits is uncertain.

APPEARANCES: Leonard R. McSweyn and David A. Provinse, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Leonard R. McSweyn and David A. Provinse appeal from the May 5, 1976, decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 33998. Appellants desire to lease "Section 5, lots 2, 3, and 6," T. 26 N., R. 59 E., P.M., Montana, as such lots are indicated on the original plat of survey approved December 4, 1902. The lots appellants desire were fast dry land riparian to the Missouri River according to the 1902 plat. However, the Missouri River now crosses most of the land

applied for except for a part of lot 2 which is included in oil and gas lease M 1652. In rejecting appellants' offer, the State Office noted the existence of the outstanding lease and held that the remainder of the land in appellants' application was "lost land."

[1, 2] The State Office properly rejected appellants' offer, filed April 15, 1976, insofar as it included land within the outstanding oil and gas lease, M 1652 issued April 6, 1967. John F. Brown, 22 IBLA 133 (1975); Joseph C. Manga, 9 IBLA 319 (1973). With respect to the remainder of the land in appellants' offer, this Board in Forest Oil Corporation, 15 IBLA 33 (1974), considered at length various questions showing the uncertainty of federal ownership of land affected by the shifting course of the Missouri River in the very section involved in appellants' offer. To resolve the instant appeal, we need only point out that appellants have not clearly established that the United States owns the oil and gas rights for the land for which they have applied, and the uncertainty of title to the oil and gas deposits alone provides a sufficient basis for rejection of their offer. Id.; Georgette B. Lee, 10 IBLA 23 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

